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Sixty-sixth General Assembly
STATE OF COLORADO

DRAFT
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BILL 9

LLS NO. 08-0303.01 Bob Lackner

INTERIM COMMITTEE BILL

**Interim Committee on Allocation
of Severance Tax and Federal Mineral Lease Revenues**

SHORT TITLE: "Fees Defray Impacts Nat Resource Dev"

A BILL FOR AN ACT

101 **CONCERNING THE AUTHORITY OF LOCAL GOVERNMENTS TO IMPOSE**
102 **IMPACT FEES TO DEFRAY PROJECTED IMPACTS REQUIRED TO**
103 **SUPPORT THE EXPANDED DEVELOPMENT OF NATURAL**
104 **RESOURCES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Interim Committee on Allocation of Severance Tax and Federal Mineral Lease Revenues. As a condition of issuance of a conditional or special use permit or similar application authorizing mining or oil and gas operations within the territorial boundaries of a county or

*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

municipality (local government), authorizes local governments to impose an impact fee or other similar development charge to fund expenditures by the local government on capital facilities or social services necessary to support such expanded oil and gas operations. Prohibits an impact fee or other similar development charge from being imposed except pursuant to a schedule that is:

- Legislatively adopted;
- Generally applied on a uniform and nondiscriminatory basis among types or kinds of mining or oil and gas operations; and
- Intended to defray the projected impacts on capital facilities or social services necessary to support the proposed expanded mining or oil and gas operations.

Requires a local government to quantify the reasonable impacts of expanded mining or oil and gas operations on existing capital expenditures or social services within its territorial boundaries. Prohibits an impact fee or other similar development charge from being imposed pursuant to this section unless the local government is able to demonstrate:

- A reasonable relationship between the amount of the fee or charge and the cost of the additional capital expenditures or social services necessary to support the proposed mining or oil and gas operations within the territorial boundaries of the local government; and
- The additional capital expenditures or social services adequately benefit the mining or oil and gas operations that are a source of the fee or charge.

Specifies procedures for the collection and accounting of moneys collected from the impact fee or other similar development charge.

Gives any person or entity that becomes subject to a schedule of fees or charges enacted pursuant to the act and files an application for a special use or other permit standing to file an action for declaratory judgment to determine whether such schedule complies with the provisions of the act.

Specifies that the act does not prohibit a local government from imposing impact fees or other similar development charges pursuant to a schedule that was legislatively adopted before a specified date if the local government complies with specified requirements of the act.

Specifies that nothing in the act shall be construed to alter, impair, or negate the authority of the oil and gas conservation commission.

Makes legislative findings and declarations. Defines terms.

1 **SECTION 1.** Part 1 of article 20 of title 29, Colorado Revised
2 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
3 read:

4 **29-20-104.7. Impact fees to defray impacts caused by mining**
5 **and oil and gas operations - legislative declaration - definitions.**

6 (1) THE GENERAL ASSEMBLY FINDS, DETERMINES, AND DECLARES THAT:

7 (a) EXPANDED MINING AND OIL AND GAS OPERATIONS
8 THROUGHOUT THE STATE WILL LIKELY EXPAND THE DEMANDS PLACED ON
9 LOCAL GOVERNMENTS FOR THE PROVISION OF CAPITAL EXPENDITURES AND
10 SOCIAL SERVICES REQUIRED TO SUPPORT SUCH OPERATIONS.

11 (b) LOCAL GOVERNMENTS WILL BE BETTER ABLE TO PROPERLY
12 PLAN FOR THIS NEW DEVELOPMENT, SERVE NEW RESIDENTS, AND ADDRESS
13 THE IMPACTS CAUSED BY MINING AND OIL AND GAS OPERATIONS SO AS TO
14 PRESERVE THE ORDERLY USE OF LAND AND PROTECT THE ENVIRONMENT
15 IF THEY ARE PERMITTED TO IMPOSE IMPACT FEES AS A CONDITION OF
16 APPROVAL OF A SPECIAL USE OR OTHER PERMIT FOR UNDERTAKING MINING
17 OR OIL AND GAS OPERATIONS.

18 (c) THE MATTERS ADDRESSED IN THIS SECTION ARE MATTERS OF
19 STATEWIDE CONCERN.

20 (2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
21 REQUIRES:

22 (a) "CAPITAL EXPENDITURES" MEANS ANY EXPENDITURE FOR AN
23 IMPROVEMENT, FACILITY, OR PIECE OF EQUIPMENT NECESSITATED BY THE
24 USE OF LAND FOR OIL AND GAS OR MINING OPERATIONS THAT IS DIRECTLY
25 RELATED TO A LOCAL GOVERNMENT SERVICE, HAS AN ESTIMATED USEFUL
26 LIFE OF FIVE YEARS OR LONGER, AND IS REQUIRED BY CHARTER OR
27 GENERAL POLICY OF A LOCAL GOVERNMENT PURSUANT TO RESOLUTION OR

1 ORDINANCE.

2 (b) "DEVELOPMENT CHARGE" MEANS ANY FEE, CHARGE, OR
3 ASSESSMENT RELATING TO A CAPITAL EXPENDITURE OR THE PROVISION OF
4 A SERVICE THAT IS IMPOSED ON THE USE OF LAND AS A CONDITION OF
5 APPROVAL OF SUCH USE AS A PREREQUISITE TO OBTAINING A PERMIT OR
6 SERVICE. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO INCLUDE
7 SALES AND USE TAXES, BUILDING OR PLAN REVIEW FEES, BUILDING PERMIT
8 FEES, CONSULTING OR OTHER PROFESSIONAL REVIEW CHARGES, OR ANY
9 OTHER REGULATORY OR ADMINISTRATIVE FEE, CHARGE, OR ASSESSMENT.

10 (c) "MINING OPERATIONS" SHALL HAVE THE SAME MEANING AS SET
11 FORTH IN SECTION 34-32.5-103 (13), C.R.S.

12 (d) "OIL AND GAS OPERATIONS" SHALL HAVE THE SAME MEANING
13 AS SET FORTH IN SECTION 34-60-103 (6.5), C.R.S.

14 (3) PURSUANT TO THE AUTHORITY GRANTED IN SECTION 29-20-104
15 (1) (g) AND AS A CONDITION OF ISSUANCE OF A CONDITIONAL OR SPECIAL
16 USE PERMIT OR SIMILAR APPLICATION AUTHORIZING MINING OR OIL AND
17 GAS OPERATIONS WITHIN THE TERRITORIAL BOUNDARIES OF THE LOCAL
18 GOVERNMENT, A LOCAL GOVERNMENT MAY IMPOSE AN IMPACT FEE OR
19 OTHER SIMILAR DEVELOPMENT CHARGE TO FUND EXPENDITURES BY THE
20 LOCAL GOVERNMENT ON CAPITAL FACILITIES OR SOCIAL SERVICES
21 NECESSARY TO SUPPORT THE OPERATIONS, INCLUDING, WITHOUT
22 LIMITATION, IMPROVEMENTS, ROADS, SCHOOLS, HOSPITALS AND OTHER
23 HEALTH CARE FACILITIES, SOCIAL SERVICES SUCH AS EMPLOYMENT AND
24 TRAINING, CRIMINAL JUSTICE, SUBSTANCE ABUSE TREATMENT AND
25 PREVENTION, AND THE PROVISION OF AFFORDABLE HOUSING. NO IMPACT
26 FEE OR OTHER SIMILAR DEVELOPMENT CHARGE MAY BE IMPOSED
27 PURSUANT TO THIS SECTION EXCEPT PURSUANT TO A SCHEDULE THAT IS:

1 (a) LEGISLATIVELY ADOPTED;

2 (b) GENERALLY APPLIED ON A UNIFORM AND NONDISCRIMINATORY
3 BASIS AMONG TYPES OR KINDS OF MINING OR OIL AND GAS OPERATIONS;
4 AND

5 (c) INTENDED TO DEFRAY THE PROJECTED IMPACTS ON CAPITAL
6 FACILITIES OR SOCIAL SERVICES NECESSARY TO SUPPORT THE PROPOSED
7 MINING OR OIL AND GAS OPERATIONS.

8 (4) (a) A LOCAL GOVERNMENT SHALL QUANTIFY THE REASONABLE
9 IMPACTS OF EXPANDED MINING OR OIL AND GAS OPERATIONS ON EXISTING
10 CAPITAL EXPENDITURES OR SOCIAL SERVICES WITHIN ITS TERRITORIAL
11 BOUNDARIES. NO IMPACT FEE OR OTHER SIMILAR DEVELOPMENT CHARGE
12 MAY BE IMPOSED PURSUANT TO THIS SECTION UNLESS THE LOCAL
13 GOVERNMENT IS ABLE TO DEMONSTRATE:

14 (I) A REASONABLE RELATIONSHIP BETWEEN THE AMOUNT OF THE
15 FEE OR CHARGE AND THE COST OF THE ADDITIONAL CAPITAL
16 EXPENDITURES OR SOCIAL SERVICES NECESSARY TO SUPPORT THE
17 PROPOSED MINING OR OIL AND GAS OPERATIONS WITHIN THE TERRITORIAL
18 BOUNDARIES OF THE LOCAL GOVERNMENT; AND

19 (II) THE ADDITIONAL CAPITAL EXPENDITURES OR SOCIAL SERVICES
20 ADEQUATELY BENEFIT THE MINING OR OIL AND GAS OPERATIONS THAT ARE
21 A SOURCE OF THE FEE OR CHARGE.

22 (b) NO IMPACT FEE OR OTHER SIMILAR DEVELOPMENT CHARGE
23 MAY BE IMPOSED TO REMEDY ANY DEFICIENCY IN CAPITAL EXPENDITURES
24 OR SOCIAL SERVICES THAT EXISTS WITHOUT REGARD TO THE PROPOSED
25 MINING OR OIL AND GAS OPERATIONS.

26 (5) ANY SCHEDULE OF IMPACT FEES OR OTHER SIMILAR
27 DEVELOPMENT CHARGES ADOPTED BY A LOCAL GOVERNMENT PURSUANT

1 TO THIS SECTION SHALL INCLUDE PROVISIONS TO ENSURE THAT AN
2 INDIVIDUAL LANDOWNER, MINING OPERATOR, OR OIL AND GAS OPERATOR
3 IS NOT REQUIRED TO PROVIDE ANY SITE SPECIFIC DEDICATION OR
4 IMPROVEMENT TO MEET THE SAME NEED FOR CAPITAL EXPENDITURES OR
5 SOCIAL SERVICES FOR WHICH THE IMPACT FEE OR OTHER SIMILAR
6 DEVELOPMENT CHARGE IS IMPOSED PURSUANT TO THIS SECTION.

7 (6) ANY MONEYS FROM ANY IMPACT FEE OR OTHER DEVELOPMENT
8 CHARGE COLLECTED PURSUANT TO THIS SECTION SHALL BE DEPOSITED OR,
9 IF COLLECTED FOR ANOTHER LOCAL GOVERNMENT, TRANSMITTED FOR
10 DEPOSIT IN AN INTEREST-BEARING ACCOUNT THAT CLEARLY IDENTIFIES
11 THE CATEGORY, ACCOUNT, FUND OF CAPITAL EXPENDITURE, OR FUND FOR
12 A PARTICULAR SOCIAL SERVICE FOR WHICH THE CHARGE WAS IMPOSED.
13 EACH SUCH CATEGORY, ACCOUNT, OR FUND SHALL BE ACCOUNTED FOR
14 SEPARATELY. THE LOCAL GOVERNMENT SHALL HAVE DISCRETION
15 REGARDING WHETHER THE ACCOUNTING REQUIREMENT IS BY CATEGORY,
16 ACCOUNT, OR FUND AND BY AGGREGATE OR INDIVIDUAL MINING OR OIL
17 AND GAS OPERATION. ANY INTEREST OR OTHER INCOME EARNED ON
18 MONEYS DEPOSITED IN THE INTEREST-BEARING ACCOUNT SHALL BE
19 CREDITED TO THE ACCOUNT.

20 (7) NO IMPACT FEE OR OTHER SIMILAR DEVELOPMENT CHARGE
21 MAY BE IMPOSED ON ANY SPECIAL USE OR OTHER PERMIT FOR WHICH THE
22 APPLICANT SUBMITTED A COMPLETE APPLICATION BEFORE THE ADOPTION
23 OF A SCHEDULE OF IMPACT FEES OR OTHER SIMILAR DEVELOPMENT
24 CHARGES BY THE LOCAL GOVERNMENT PURSUANT TO THIS SECTION. NO
25 IMPACT FEE OR OTHER SIMILAR DEVELOPMENT CHARGE IMPOSED ON ANY
26 DEVELOPMENT ACTIVITY MAY BE COLLECTED BEFORE THE ISSUANCE OF
27 THE SPECIAL USE OR OTHER PERMIT.

1 (8) ANY PERSON OR ENTITY THAT BECOMES SUBJECT TO A
2 SCHEDULE OF FEES OR CHARGES ENACTED PURSUANT TO THIS SECTION
3 SHALL, BY FILING AN APPLICATION FOR A SPECIAL USE OR OTHER PERMIT,
4 HAVE STANDING TO FILE AN ACTION FOR DECLARATORY JUDGMENT TO
5 DETERMINE WHETHER SUCH SCHEDULE COMPLIES WITH THE PROVISIONS OF
6 THIS SECTION. AN APPLICANT FOR A SPECIAL USE OR OTHER PERMIT WHO
7 BELIEVES THAT A LOCAL GOVERNMENT HAS IMPROPERLY APPLIED A
8 SCHEDULE OF FEES OR CHARGES ADOPTED PURSUANT TO THIS SECTION TO
9 THE DEVELOPMENT APPLICATION MAY PAY THE FEE OR CHARGE IMPOSED
10 AND PROCEED WITH DEVELOPMENT WITHOUT PREJUDICE TO THE
11 APPLICANT'S RIGHT TO CHALLENGE UNDER RULE 106 OF THE COLORADO
12 RULES OF CIVIL PROCEDURE THE FEE OR CHARGE IMPOSED. IF THE COURT
13 DETERMINES THAT A LOCAL GOVERNMENT HAS EITHER IMPOSED A FEE OR
14 CHARGE ON A MINING OR OIL AND GAS OPERATION THAT IS NOT SUBJECT
15 TO THE LEGISLATIVELY ENACTED SCHEDULE OR IMPROPERLY CALCULATED
16 THE FEE OR CHARGE DUE, THE COURT MAY ENTER JUDGMENT IN FAVOR OF
17 THE APPLICANT FOR THE AMOUNT OF ANY FEE OR CHARGE WRONGLY
18 COLLECTED WITH INTEREST THEREON FROM THE DATE COLLECTED.

19 (9) THIS SECTION DOES NOT PROHIBIT ANY LOCAL GOVERNMENT
20 FROM IMPOSING IMPACT FEES OR OTHER SIMILAR DEVELOPMENT CHARGES
21 PURSUANT TO A SCHEDULE THAT WAS LEGISLATIVELY ADOPTED BEFORE
22 JULY 1, 2008, IF THE LOCAL GOVERNMENT COMPLIES WITH THE
23 REQUIREMENTS OF THIS SECTION. ANY AMENDMENT OF SUCH SCHEDULE
24 ADOPTED AFTER JULY 1, 2008, SHALL COMPLY WITH THE REQUIREMENTS
25 OF THIS SECTION.

26 (10) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,
27 NOTHING IN THIS SECTION SHALL BE CONSTRUED TO ALTER, IMPAIR, OR

1 NEGATE THE AUTHORITY OF THE OIL AND GAS CONSERVATION COMMISSION
2 CREATED IN SECTION 34-60-104 (1), C.R.S.

3 **SECTION 2. Effective date - applicability.** This act shall take
4 effect July 1, 2008, and shall apply to impact fees or other similar
5 development charges imposed on or after said date.

6 **SECTION 3. Safety clause.** The general assembly hereby finds,
7 determines, and declares that this act is necessary for the immediate
8 preservation of the public peace, health, and safety. <{Ask committee.}>